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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/473,791	12/28/1999	BRIAN HAACK		1467

7590 10/04/2004

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EXAMINER

GUTMAN, HILARY L

ART UNIT PAPER NUMBER

3612

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/473,791

Applicant(s)

HAACK, BRIAN

Examiner

Hilary Gutman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) 5-7, 12-14, 18-20, 27, 29-43, 45 and 51-53 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 8-11, 15-17, 21-26, 28, 44 and 46-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 12/23/03. These drawings are acknowledged by the examiner. However, some drawing objections (stated below) still exist.

2. The drawings are objected to because:

In Figures 14 and 15, another embodiment is illustrated but it is unclear how the storage compartments of these figures are related. It appears from Figure 15 that the back end of the storage compartment should be open since no panel or side wall completes the storage compartment. However, in Figure 14, the storage compartment appears complete and there appears to be some unknown panel at the back to close the storage compartment. The same problem appears to apply to Figures 14 and 16.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the enclosure panel rotating about a vertical axis of claims 1 and 15; the enclosure panel being “releasably affixed” to the first side of the base panel when not within the enclosure securing means of claims 12 and 26; the hoop and loop type fastener of claims 13 and 27; the “storage compartment” of both claims 28; and the “divided locking means” of claim 50 must be shown or the feature(s) canceled from the claim(s).

No new matter should be entered.

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4. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

5. The disclosure is objected to because of the following informalities:

On page 13, lines 2-3, the paragraph that was inserted mistakenly states that the base panel is then rotated "from the vertical position to an essentially horizontal position". However, it is apparent that the base panel really is rotated "from the horizontal position to an essentially vertical position" and the statement should perhaps be modified.

On page 16, lines 9-13 are unclear specifically with respect to the enclosure panel 92, where it is located, and how it moves. Specifically, in Figures 11 and 12, panel 92 appears to be spaced from the liner front wall 34 and not "located within" it as stated. Furthermore, Figure 18

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is unclear as to what's going on. Specifically, the specification states the embodiment is provided with a side panel 98 which is not shown in Figure 18. Additionally, the specification states the embodiment does not include side walls 36, 38 but then goes on to state "the side walls provide an enclosure panel 92". Appropriate correction is required.

6. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

Claim Objections

7. Claims 10 and 28 are objected to because of the following informalities:

In claim 10, on line 4, "the divider" should be "the divider panel".

In claim 28, on line 8, the two dashes after "when" should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claims 1-4, 8-11, 15-17, 22-26, 28, and 49-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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For claims 1, 15, and 28, the limitation that the enclosure panel rotates about "a vertical axis" is misleading in that it appears instead to rotate about a horizontal axis.

Claim 10 recites the limitations "they" in line 5 and "them" in line 8. There is insufficient antecedent basis for these limitations in the claim.

For claims 46 and 48, and the specific "molded", "cut", and "manufactured" limitations, it should be noted that the patentability of a product does not depend on its method of production (MPEP 2113).

Claim 49 recites the limitation "they" in line 3. There is insufficient antecedent basis for this limitation in the claim.

In claim 50, line 2, it is unclear whether the "divided locking means" are meant to be the same as the "securing means" previously recited in claim 44 or a different feature of the invention.

Double Patenting

10. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

11. Applicant is advised that should claim 1 be found allowable, claim 15 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight

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difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

12. Claims 44 and 46-50 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1, 3-5, and 7-8 of prior U.S. Patent No. 6,015,178. This is a double patenting rejection.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 44, 46, and 48, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Chapline et al.

For claim 44, Chapline et al. (4,750,773) disclose a truck bed generally having a front wall, two side walls, a bottom, and a tailgate, the improvement comprising: a hingedly affixed divider 20 and divider securing means 30, 32, whereby, the divider can be positioned and secured with the divider securing means to compartmentalize the truck bed.

With regard to claim 46, the improvement is attached to the truck bed and has three free edges and a fourth edge comprising a hinge means to fix the divider to the bed.

With regard to claim 48, the divider can apparently be attached to the bed after the bed is manufactured.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chapline et al. as applied to claim 46 above and further in view of Justice.

With regard to claim 47, Chapline et al. lack a living hinge.

Justice (5,456,514) teaches a truck bed liner having a divider panel attached to the liner with a living hinge.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a living hinge as taught by Justice in place of the hinge of Chapline et al. in order to make unnecessary additional parts of the divider.

Allowable Subject Matter

17. Claims 1-4, 8-11, 15-17, 22-26, and 28 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

18. Claims 49-50 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

19. Applicant's arguments with respect to claims 1-4, 8-11, 14-17, 22-26, 28-30, 44, 46-50, and 53 have been considered but are moot in view of the new ground(s) of rejection.

Applicant states in the remarks that claims 29 and 53 have been canceled, but this does not appear to be the case since the examiner can find no instance of the cancellation of these claims.

Conclusion

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

21. **Any response to this action should be mailed to:**

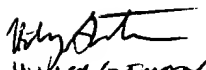
Assistant Commissioner for Patents
Washington, D.C. 20231

or faxed to:

(703) 872-9326, (for formal communications intended for entry)

or:

(703) 746-3515, (for informal or draft communications, please clearly label "PROPOSED" or "DRAFT").


Hilary Gutman
7/22/07